In the High Court of Punjab and Haryana at Chandigarh

1. **CRA-D-314-DBA-2003 (O&M)**
Reserved on: 26.9.2024
Date of Decision: 1.10.2024

State of Haryana .....Appellant

Versus

Suresh Kumar and others .....Respondents

2. **CRR-563-2003 (O&M)**

Ramesh Kumar .....Petitioner

Versus

State of Haryana and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pawan Girdhar, Addl. A.G., Haryana.

Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate
for the petitioner (in CRR-563-2003).

Mr. R.S.Cheema, Senior Advocate with
Mr. K.D.S.Hooda, Advocate
for the respondents/accused.

Proceedings against accused-respondents Suresh Kumar, Ishwar, Ram Singh and Maha Singh were abated vide order dated 26.9.2004.

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SURESHWAR THAKUR, J.

1. Since both the appeal (supra) as well as criminal revision (supra) arise from a common verdict, made by the learned trial Judge concerned, hence they are amenable for a common verdict being made

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thereons.

2. Both the supra are directed against the verdict drawn on 16.10.2002, upon Sessions Cases No. 13, 14, 15 of 1999/2002, by the learned Additional Sessions Judge, Fast Track Court, Sonepat, wherethrough in respect of the charges drawn for the offence punishable under Sections 148, 302 read with Section 149 IPC, Section 120-B IPC, and under Section 25 of the Arms Act, thus the learned trial Judge concerned, proceeded to make a verdict of acquittal against all the accused.

3. The State of Haryana, and, complainant Ramesh become aggrieved from the above drawn verdict, and, are led to institute thereagainst respectively the instant appeal (supra) and the criminal revision (supra) before this Court.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PE is assigned. It is narrated in Ex. PG, that on 17.10.1998 at 1.30 P.M., complainant Ramesh son of Bhale Ram, resident of village Ahulana made a statement to SI Sube Singh, SHO, P.S Ganaur to the effect that his father Bhale Ram had two brothers named Sheo Ram and Duli Chand. Sheo Ram was the eldest brother of his father and Duli Chand was elder to Bhale Ram. Duli Chand had a son namely Mahender Singh aged 46-47 years. On 17.10.98 he had gone to his field known as Kalar wala in the morning. It was drizzling. He was standing under a kikar tree to protect himself from drizzle when at about 11.15 A.M. Mahender Singh son of Duli Chand and Devender son of Hoshiar Singh, who is the brother of wife of his younger brother Ishwar Singh, came there on a Hero Honda Motorcycle No. HR-06B-1888 on their

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way to Ganaur from village Ahulana. Ishwar Singh had come to their house for giving Diwali gifts. When they came in front of his field, Mahender Singh stopped the motor-cycle on seeing him. Devender Singh, who was occupying the seat on the pillion alighted from the motor-cycle. Mahender Singh kept sitting on the motor-cycle. He was talking to Devender Singh when Anand, and Yudhvir Singh sons of Ishwar Singh and Suresh Kumar son of Ram Singh residents of village Ahulana reached there in an Esteem Car of white colour. The car was parked by them in front of the motorcycle of Mahender Singh to block the road. In the meantime, Raj Kumar son of Dharma Singh @ Mahal resident of village Ahulana, who was covering himself with a black water proof jacket reached there on his Hero Honda motorcycle of red colour with Bijender @ Kala son of Ishwar resident of Ahulana, who was the pillion rider, from the direction of village Ahulana. Raj Kumar stopped his motorcycle near the motorcycle of Mahender Singh. Bijender @ Kala who was armed with a pistol or revolver fired a shot upon Mahender Singh from behind. Mahender Singh fell down on the left side in the middle of the road with his motor-cycle, on receiving the shot. Raj Kumar then parked his motorcycle and took the pistol or revolver from the hands of Bijender @ Kala and continously fired 4-5 shots at Mahender Singh, who was lying on the road. When he himself and Devender Singh tried to catch hold of them, Raj Kumar threatened to shoot them. After that Anand said that the work has been done and exhorted the assailants to run away. Thereupon, Raj Kumar and Bijender sped away on their motorcycle while Anand, Yudhvir and Suresh Kumar sped in their Esteem car with pistols and revolvers towards Ganaur. When he himself and Devender examined Mahender Singh, they found him to be already dead. There were

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fired arm injuries on the back of his left shoulder, above the right ear, right temporal region, below right eye and above the forehead. The wounds were bleeding profusely. Leaving Devender near the dead body, he went to village for giving information. He turned to the place of crime with his family members and a number of villagers. The complainant further alleged, that the altercations had taken place between Mahender Singh and the family members of Raj Kumar during Panchayat elections resulting in an ill-will between the parties. Bijender @ Kala and Mahender Singh also exchanged blows during elections for the membership of Parliament subsequently. A compromise had been effected between both the families but Anand, Yudhvir Singh, Raj Kumar and Bijender @ Kala were still keeping a grudge, and, due to this reason, they have committed the murder of Mahender Singh. On the basis of the statement (supra), the appeal FIR became registered.

Investigation proceedings

5. During the course of investigations, the place of crime was photographed. Dead body of Mahender was sent to the hospital for conducting the post-m0rtem examination thereon. The accused were arrested, and, got recorded their disclosure statements. Accused Raj Kumar made a disclosure statement on 12.11.1998 and pursuant to the said statement he got recovered .38 bore country made pistol and four empty cases of cartridge. The same were taken into possession vide memo Ex. PO, and became deposited with MHC. A case under Section 25 of the Arms Act was also registered against accused Raj Kumar. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court

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concerned.

Committal Proceedings

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through the committal orders made respectively on 24.3.1999 and on 7.6.1999, hence proceeded to commit the accused (in all three cases) to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges (in all three cases by one charge sheet) against all the accused, for the offences punishable under Sections 148, 302 read with Section 149 IPC, Section 120-B IPC, and under Section 25 of the Arms Act The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 18 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

9. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. The accused chose to adduce defence evidence, and led 16 witnesses into the witness box.

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Submissions of the learned State counsel and of the learned senior counsel for the petitioner

10. The learned counsel for the appellant-State (in CRA-D-314-DBA-2003) as well as the learned senior counsel for the petitioner (in CRR-563-2003), have made vehement submissions before this Court, that the reasons assigned by the learned trial Judge concerned, for making an order of acquittal, upon the accused, are extremely frail, besides are not based upon a sound appreciation of the evidence on record. Therefore, they contend, that the impugned verdict of acquittal be quashed, and, set aside.

11. They further submit, that the learned trial Court erred in acquitting the accused on the basis of unproved and inadmissible evidence of alibi, and, that the observations of the learned Court below are totally based upon conjectures and surmises. In addition, they further submit that since the bullets recovered from the dead body of deceased Mahender were found to have been fired from the revolver recovered from accused Raj Kumar, however, the said fact has not been taken into consideration by the learned Court below. Furthermore, they also submit, that the learned trial Court concerned, has wrongly concluded that there was no motive for the accused to commit the murder of the deceased concerned.

Submissions of the learned senior counsel for the accused-respondents

12. On the other hand, the learned senior counsel for the accused-respondents has argued before this Court, that the verdict of acquittal as has been challenged before this Court, is well merited, thus it does not require any interference being made by this Court. He rests the above submission on the ground, that there was unimpeachable evidence of alibi with regard to surviving appellants Bijnder, Yudhvir Singh, Raj Kumar and Anand, which has been rightly accepted by the learned Court below, and, that at the

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relevant time, the investigating agency was informed about the presence of the above accused in Bengal Engineer Groupt Centre, Rurkee on 17.10.1988.

Reasons assigned by the learned trial Court below while acquitting the accused-respondents

"*36. I have no reason to disbelieve the entries in the official records of the Army and the statements made by the Army officers regarding the presence of accused Anand in the Bengal Engineer Group Centre at Rurkee throughout the day of 17.10.98 and presence of Yudhvir Singh and Raj Kumar throughout the day on 17.10.98. Bijender accused might have also gone to Rurkee for paying visit to his brothers Capt. Anand and Yudhvir Singh on 15.10.98 and his presence at Rurkee on 17.10.98 cannot be altogether ruled out.*

37. Even if it is argued that there is no clinching evidence regarding the presence of accused Capt. Anand Kumar at Rurkee the whole day on 2.10.98 and 17.10.98 and presence of Yudhvir Singh and Raj Kumar accused at Rurkee throughout the day on 17.10.98, the prosecution has to stand on its own legs and it cannot take advantage of the weakness, if any, in the defence evidence. If closely scrutinized there are a number of infirmities in the prosecution evidence. First of all there was no immediate motive with the accused persons to hatch conspiracy to commit murder of Mahender Singh and pursuant to that conspiracy to commit murder of Mahender Singh on 17.10.98. The only motive for committing murder of Mahender Singh attributed to the accused persons by the prosecution witnesses is election rivalry and hot words exchanged betweeen Raj Kumar and Mahender Singh at the time of Panchayat election and a quarrel taking place between Bijender and Mahender Singh deceased at the time of election for the membership of Parliament. According to Ramesh Kumar, Panchayat elections were held in the year 1992 in which the altercations took place between Raj Kumar and deceased Mahender Singh. No police case was registered on the basis of any such quarrel. Admittedly, accused persons did not cause any injury to Mahender Singh between the

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year 1992 and the year 1998 before the murder of Mahender Singh. Elections for the membership of Parliament was held in the year 1997 or February 1998 according to this witness Ramesh Kumar. Neither the deceased nor his any relative and neither any relative of the accused persons was contesting election for the membership of Parliament. Even if, it is believed that some quarrel took place between Bijender and Mahender Singh deceased, it was not so strong as to motivate the accused persons to enter into a conspiracy to commit murder of Mahender Singh, so the motive for committing murder of Mahender Singh was not only weak but there was also no immediate cause for committing murder of Mahender Singh. Devender son of Hoshiar Singh accompanied Mahender Singh on the motor cycle driven by Mahender Singh as a pillion rider and he was allegedly present at the spot when Mahender Singh was shot dead by Bijender and Raj Kumar. This Devender was brother of wife of Ishwar. Ishwar is the brother of Ramesh PW13 and a cousin of deceased Mahender Singh. An inference can be drawn that if examined Devender would have not have supported the prosecution case. Non-examination of a close relative of the deceased who has been cited as an eye witness creates a strong doubt on the veracity of the prosecution case. It may be that Mahender Singh was murdered by some unidentified person and the accused persons have been falsely implicated and Devender, therefore, refused to give false evidence against the accused persons. Mahender Singh was shot dead on the road more then 1 km. away from village Ahulana at an isolated place. Capt. Anand, Spr. Yudhvir Singh and Sepoy Raj Kumar are serving in Indian Army and they are well trained in using sophisticated fire arms. Even one of them could have shot down Mahender Singh at such an isolated place. It did not require Cap. Anand, Spr. Yudhvir Singh and Spey Raj Kumar to come down from 150 km. to village Ahulana after abandoning their duties at their place of postings for the purpose of killing Mahender Singh and join Suresh and Bijender with them and use two vehicles for chasing Mahender Singh before shooting him down. Implicating eight closely related persons in the conspiracy and murder of Mahender Singh also discredited the prosecution story. According to Ramesh Kumar first shot from the .38 bore revolver was fired by

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Bijender causing injury on the back of the Mahender Singh behind his shoulder. Thereafter Raj Kumar took the revolver from him and pumped 4-5 bullets on the temporal region and head ofMahender Singh. The story runs counter to normal human behaviour. Bijender could have empted all the five bullets in the magzine of the country made revolver and killed Mahender Singh alone. There was no necessity of Raj Kumar to take over the revolver from him and fire four shots from the revolver. On this ground also the prosecution story is unnatural and improbable. The prosecution story is unnatural on another ground also. Accused Anand, Yudhvir Singh, Suresh, Raj Kumar and Bijender were personally known to Ramesh Kumar and Devender. If Ramesh is to be believed he was talking to Devender near the motor-cycle on which Mahender Singh was sitting when the shots were fired and when he himself and Devender tried to rescue Mahender Singh assailant Raj Kumar aimed pistol towards them and threatened to kill them. Accused Raj Kumar and Bijender would not have spared Ramesh Kumar and Devender for giving evidence in the court as eye witnesses had Ramesh Kumar and Devender seen them shooting down Mahender Singh. On this ground also prosecution case is doubtful. The number of the motor-cycle and the esteem car which were used by the accused persons for going to the place of crime and returning to their places of postings have not been mentioned. It was admittedly drizzling. When there is a drizzle it cannot be said that the number of the car and motor-cycle were not visible due to mud staining. These vehicles have also not been recovered by the police from the accused persons which also cast shadow of doubt on the prosecution story. Raj Kumar, accused was arrested on 10.11.98. His disclosure statement Ex.PN was allegedly recorded on 12.11.98 in the presence of Duli Chand and Amar Dass witnesses by SI Sube Singh. Pursuant to his disclosure statement Raj Kumar accused allegedly got recovered .38 bore revolver and five empty cases of fire bullets. When asked to identify the person who made disclosure statement Ex.PN and who got recovered the revolver and the empty cases of bullets Duli Chand identified Yudhvir Singh and named his as Raj Kumar. Identifying Yudhvir Singh as person who made disclosure statement and got recovered the pistol and empty cases of cartridge

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and naming him as Raj Kumar also falsifies the recovery of revolver and empty cases of cartridge at the instance of Raj Kumar. The fired bullets were recovered from the dead body of Mahender Singh by Dr. Adarsh Sharma on 17.10.98 at the time of post mortem examination of the dead body and these four bullets were put in a bottle which was sealed by Dr. Adarsh Sharma and handed over to constable Satbir Singh and Daya Kishan who in turn handed over these sealed bottle to SI Sube Singh, which was deposited by SI Sube Singh with MHC Narender Kumar PW2 on 17.10.98. According to MHC Narender Kumar he sent three sealed parcels to FSL through constable Billu No.1033 on 11.11.98. Why the sealed parcel containing bullets was not sent to FSL before 11.11.98? There was no reasonable excuse with the police for keeping the sealed parcels with it for such a long period of time. It has not been made clear by Dr. Adarsh Sharma as to what was the type of seal impression used for sealing the bottle. In the report of FSL Ex.PC it has not been mentioned as to what type of seal impression was used on the sealed parcels received by the FSL. Word bottle has not been used as the container of the four bullets. Only it has been mentioned that there were two seals of doctor. In the absence of any evidence regarding the type of seal used for sealing the parcel and the container in which the bullets were sealed, it cannot be said that the parcel was not tempered with by anybody during the period it remained in police custody from 17.10.98 to 11.11.98. Police pading in such is well known. The shots are fired by the police from the weapon recovered by them or planted on the accused and then these are sent to FSL. It is a well known practice, of many police officials. In the circumstances of this case, it is not safe to place reliance upon the report of FSL and to convict the accused persons on the basis of such report alone. Even the report is not admissible in evidence because the ballistics expert has not been examined and the accused have not been given an opportunity to cross-examine him as to what was the nature of the seal used and on the basis of which features the Ballistics expert came to the conclusion that the fired bullets sent to the Laboratory were fired from no other weapon but only the revolver allegedly recovered at the instance of Raj Kumar accused."

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Reasons for allowing the criminal appeal and the criminal revision, filed respectively by the State of Haryana and by the complainant.

13. For the reasons to be assigned hereinafter the criminal appeal (supra) and the criminal revision (supra) filed respectively by the State of Haryana and by the complainant, are allowed.

14. During the course of adduction of defence evidence, DW-1 Sub. Balwinder Singh produced the photocopies of Ex. D7. However, Ex. D7 is an opinion wherebys becomes purportedly supported the plea of alibi as became propagated by accused Yudhvir Singh and by accused Capt. Anand. The said witness has also produced the photocopies of the following documents:-

Ex.D1	Attendance Register, Spr/Skt. Yudhvir Singh Cl-IV SKT Oct 98
Ex. D2	Morning report Book : PC Co. dated 17 Oct 98 in c/o Spr. Yudhvir Singh Cl-IV SKT Class
Ex. D3	Officer/JCO inspection book
Ex. D4	Identity Card Register
Ex. D5	On Duty Certificate issued by Col. R Chakarvarty Commanding Officer No. 1 Battln.
Ex. D6	Acquittance Roll pertaining to accused Capt.Anand
Ex. D7.	Military Court Inquiry
Ex. D8.	Letter No. 0867/108/A-2 (PC) dt. 4.3.1999
Ex. D9	Letter No. 44002/R1/69/CT dt. 8.11.1998
Ex. D10	Letter No. 0867/IT/A2 dt. 6.11.1998
Ex. D11	Letter No. 0867/A/33/A2 dt. 13.11.1998
Ex. D12	Letter No. 0867/22/A2 dt. 11.11.1998
Ex. D13	Letter No. 0867/19/A2 dt. 9.11.1998
Ex. D14	Letter No. 0867/09/A2 dt. 24.10.1998
Ex. D15	Letter No. 0867/14/A2 dt. 5.11.1998
Ex. D16	Letter No. 0867/13/A2 dt. 5.11.1998
Ex. D17	Letter No. 50064/Misc./226/2TB dt. 24.10.1998
Ex. D18	Order No. 0867/A2 (PC)
Ex. D19	Office note No. 50321/Trg/204/2TB
Ex. D20	Letter No. 11636/26/BCT dt. 13.10.1998

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Ex. D21	Inter office Note No. 20170-Ex/68/FE dt. 2.6.1998
Ex. D22	Convening order of Mil. Court of Inquiry vide convening order No. 15335044/YS/01/PC dt. 17.10.1998
Ex. D23	Certificate issued by Lt. Col. PP Roy confirming the attendance of Capt. Anand Kumar on 17.10.1998
Ex. D24	Order No. 0883/NA/A2 dt. 14.10.1998

15. Initially photocopies' are not primary evidence rather the apposite primary documentary evidence is required to be tendered into evidence. Moreover, even upon tendering into evidence of the originals, yet they were also required to undergo the process of the author(s) thereofs rather proving the said originals through their respectively stepping into the witness box. However, neither the photocopies became proven from the original(s) by the author(s) thereof, nor the original documents became produced before the learned trial Judge concerned. In addition, only the photocopy of the opinion (Ex. D1) of the General Court Martial, thus supporting the exculpatory plea of alibi became tendered into evidence. Significantly, the original proceedings of the General Court Martial, thus underscoring the respective presences therebefore of the accused concerned, rather on the relevant dates, but remained omitted to be produced in evidence. Therefore, the effect thereof is that, no credence was required to be assigned to the above, as untenably done by the learned trial Court concerned.

16. Though, the exhibits (supra), as detailed in the table (supra), prima facie display, that on the relevant date, accused Yudhvir Singh, and, accused Capt. Anand were present at Roorkee, and, though therebys the said documents prima facie support the exculpatory plea of alibi, as became

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raised by the accused (supra). However, reiteratedly unless the authors of the said documents, became led into the witness box, thereupon, the tendering of the said documents into evidence by the defence witness concerned, thus would not coax this Court to assign any evidentiary vigour to the documents (supra). In consequence, reiteratedly when the authors of the said documents along with the contemporaneous thereto record, thus did not step into the witness box for therebys theirs lending efficacious proof to the said documents, thereupon also no credence was required to be assigned to the documents (supra), as untenably done by the learned trial Judge concerned.

17. Though, the other adduced defence evidence did purportedly pronounce qua the respective presences of accused Raj Kumar and accused Bijender, thus at BEG Center, Roorkee. However, the said adduced defence evidence are only photocopies of the originals hence of the hereinafter extracted exhibits. The said documents became tendered into evidence by DW-3, DW-4 and DW-5.

Ex.D25	Statement of JC-19716 1Y Subedar Jasbir Singh
Ex. D26	Letter dated 22.10.1998 written by DW-4 to the Adjutant Specialist Training Btn. (Depot), Roorkee for verficiation of entrance of accused Bijender
Ex. D27	Letter dated 28.10.1998 (written by DW-5) received by DW-4 for verification of the signatures of accused Bijender
Ex. D28	Letter issued by DW-4 after verifying the signatures of accused Bijender
Ex. D29	Letter dated 3.11.1998 (written by DW-5) received by DW-4.

18. Though, the documents (supra) became tendered into evidence by the witnesses (supra), and, has also led to the making of exhibition marks thereons. However, though threons also pronouncements occur vis-a-vis the respective presences of accused Raj Kumar and accused Bijender at

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BEG Center, Roorkee. Nonetheless, the documents (supra) appear to become anviled, upon certain letters and register entries. However, neither the said registers became tendered into evidence, whereons, the documents (supra), became planked nor the author(s) thereof stepped into the witness box. Moreover, certain persons, on whose statement, the said documents became banked, also did not step into the witness box. Therefore, the omission (supra) did not assign the fullest opportunity to the learned Public Prosecutor concerned, to make an efficacious cross-examination, upon the witnesses, who tendered the documents (supra) before the learned trial Judge concerned. Therefore, when therebys, the learned Public Prosecutor became forestalled to impeach the credit of the supra adduced documentary evidence, thus in purported support of the plea of alibi as became propagated by the accused. In sequel, no credence was required to be assigned to the documents (supra), as untenably done by the learned trial Court concerned.

19. Conspicuously when the accused raised the exculpatory plea of alibi, thereupon the onus rested upon the accused, to thus efficaciously discharge the said onus. An efficacious discharge of burden cast upon the accused but would happen only when the register(s) concerned, the author(s) thereof, the persons on whose statement(s) the documents concerned, thus became banked, besides the original proceedings of the Court Martial concerned, became tendered into evidence. Strangely, all the above became suppressed or withheld by the defence. Moreover, since therebys the Public Prosecutor concerned, became effectively forestalled from impeaching the credit of the said adduced documentary evidence. Consequently therebys there was no efficacious discharge by the accused vis-a-vis the burden relating to the said adduced documents, rather undergoing the process of

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theirs becoming ably proved. If so, on the hinge of the said adduced thus infirm documentary evidence, the learned trial Judge concerned, was not required to be accepting the plea of alibi, as became raised by the accused.

20. Be that as it may, in the instant case, thus a comparative analyses is required to be made vis-a-vis the plea of alibi, which became accepted by the learned trial Court concerned, vis-a-vis the rendition of an eye witness account qua the crime event by Ramesh Kumar. Moreover, there is a necessity qua a finding being recorded vis-a-vis the comparative evidentary worth of the documents (supra), whereons the exculpatory plea of alibi becomes founded, rather with the signatured disclosure statements, and, consequent thereto recovery memos, as became respectively prepared, and, became tendered into evidence.

Analysis of the depositions of the eye witness to the occurrence, who respectively stepped into the witness box as PW-13

21. Complainant Ramesh Kumar, stepped into the witness box as PW-13, and, in his examination-in-chief, he thus made an articulation, that on the fateful day, at about 11.00/11.15 A.M., when he was standing under a kikar tree, thereupon his cousin Mohinder came from the side of the village on his motorcycle bearing No. HR-06B-1888. He also speaks that, Devinder, brother-in-law of his brother Ishwar was the pillion rider, and, that the said Devinder alighted from the motorcycle and started talking to him. After 5-7 minutes, Capt. Anand, Yudhvir and Suresh came in a Esteem car from the side of the village, and, parked the said car after overtaking the motorcycle of Mohinder. Raj Kumar along with Bijender who was the pillion rider, also came there on Hero Honda motorcycle. He further stated thereins, that Bijender alias Kala took out a pistol and fired a shot upon Mohinder which

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hit on his back. Owing to the said fire shot Mohinder fell on the road. Whereupon Raj Kumar snatched the pistol from Bijender and fired 4-5 times upon Mohinder, when he was lying on the ground. He also deposed that when they tried to intervene, thereupon Raj Kumar aimed the pistol towards them and threatened to kill them, whereafter Anand declared in a loud voice that the work has been done. Subsequently Suresh, Yudhvir and Anand went in a car while the remaining two accused went on the motorcycle towards Ganaur side. In his examination-in-chief, the said witness has voiced a narrative, qua the genesis of the prosecution case, which is in complete tandem with his previously made statement, in writing, and, to which Ex.P8 becomes assigned. Though, he was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but he remained unscathed in the said ordeal.

22. Since a wholesome reading of his testification, as carried in his examination-in-chief, and, in his cross-examination, does not unfold, qua thereins rather becoming carried any rife improvements or embellishments viz-a-viz his previously recorded statement, in writing, nor when his testification suffers from any further taint of its being ridden with any *intra se* contradiction, thus *intra se* his examination-in-chief, and, his cross-examination, therefore, utmost sanctity is to be assigned to his testification.

Signatured disclosure statement of convict-appellant Raj Kumar Ex. PN

23. During the course of investigations, being made into the appeal FIR, convict-appellant Raj Kumar, thus made his signatured disclosure statement, to which Ex. PN becomes assigned. The signatured disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

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"x x x x

I am serving in Bengal Engineering Group Roorkee in the Army and son of my Tau I.e, my brother Yudhbir S/o Ishwar Singh, Jat resident of Ahulana as a soldier and Anand S/o Ishwar Singh as a Captain are serving there. On 01 April, 1998, three boys had committed murder of my cousin Vinod S/o Prem in which Mahender S/o Duli Chand, Jat resident of Ahulana was involved and we were also having dispute on the panchayat election with Mahender. We had determined to take revenge from Mahender in our mind. Anand had come to Gannaur to consult with his father Ishwar Singh, Tau Ram Singh and uncle Maha Singh on Dussehra festival. After consulting with them when he reached back in the centre, he had elucidated the plan of committing murder of Mahender to me and his brothers Yudhvir and Bijender @ Kala who had gone to Rorkee with us. On the night of 16-17/10/98, 1 was on duty in ORs Mess. According to plan, I left my duty and took Yudhvir and Bijender @ Kala with me and moved from Roorkee at about 2-1/2 O'clock at night by bus and on 17.10.98 at about 7 O'clock in the morning, we had reached in the house of my uncle Maha Singh and at about 7.30 O'clock in the morning, Anand also reached in Gannaur in esteem car. According to plan, Anand took with him Suresh S/o Ram Singh resident of Ahulana at present Gannaur and his brother Yudhbir in esteem car and reached in Ahulana. I and Bijender @ Kala took motor cycle No. HR-42/1817 Hero Honda of red colour from the house of my uncle Maha Singh and reached on our tubewell which is beside the road in village Ahulana and started waiting for Mahender S/o Duli Chand who used to come to Gannaur daily on motor cycle. At about 11 O'clock during day, Mahender got sit a boy with him on motor cycle and came out from the village outer gate, Anand, Yudhvir and Suresh followed Mahender in esteem vehicle from the side of village. I along with Bijender @ Kala also followed Mahender on motor cycle. When Mahender reached in front of his Kallarwala field on the road, Anand placed the esteem car in front of motor cycle of Mahender due to which Mahender stopped and at the same time, I and Bijender @ Kala reached near the motor cycle Hero Honda of Mahender and Bijender who was in possession of revolver given by me, fired shot in the waist of Mahender. On hit by the shot,

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Mahender fell down on the road along with motor cycle and the boy sitting behind him on the motor cycle, ran away. I took my revolver from Bijender @ Kala and fired 4/5 shots on fallen Mahender. Then on the saying of Anand, Anand, Yudhvir and Suresh who were in the car ran away. I got sit Bijender on the motor cycle and ran away from the spot. I have kept concealed the revolver and one empty case of cartridge in village Atayal in the Kikkar trees after wrapping in a polythene bag in the jungle near the road out of fear of having apprehended about which nobody else except me has any knowledge. I can get it recovered after demarcation. I had left the Hero Honda motor cycle in the house of my uncle Maha Singh in Gannaur and I and Bijender had gone to our center in Roorkee in the Army."

24. Pursuant to the above made signatured disclosure statement, the convict-appellant Raj Kumar ensured the recovery of one country made revolver 38 bore and 5 empty cases of cartridges, which were taken into police possession, through recovery memo, to which Ex. PO becomes assigned.

25. The disclosure statement (supra), carries thereons the signature, of the convict-appellant. In his signatured disclosure statement (supra), the convict, confessed his guilt in inflicting injuries on the person of the deceased, hence with the recovered weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory weapons of offence. Moreover, the said signatured disclosure statement, does also make speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

26. Significantly, since the appellant has not been able to either ably deny his signatures as occurs on the exhibit (supra) nor when he has

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been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recovery(ies) is/are either contrived or invented. Therefore, the exhibit(supra) is *prima facie* concluded to be holding the utmost evidentiary tenacity.

27. Significantly also, since post the making of the said signatured disclosure statement, becoming made, thus by the convict to the investigating officer concerned, his through the recovery memo (Ex.PO), thus caused the recovery of the weapon of offence to the investigating officer concerned. Consequently, when the said made recovery is also not suggested by any cogent evidence to be a planted recovery. Resultantly, the effect thereof, is that the valid recovery was made vis-a-vis the incriminatory weapon of offence by the convict, to the investigating officer concerned. In sequel, the making of the valid signatured disclosure statement, by the convict besides the pursuant thereto effectuation of valid recovery of the incriminatory weapon of offence, thus by the convict to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

28. However, yet for assessing the vigor of the said made disclosure statement and consequent thereto made recovery, it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statement and to the consequent thereto made recovery. The principles governing the facet (supra), become embodied in paragraphs Nos. 23 to 27 of a judgment rendered by the Hon'ble Apex Court in ***Criminal Appeal Nos.1030 of 2023, titled as "Manoj Kumar Soni V. State of Madhya Pradesh", decided on 11.8.2023***, relevant paragraphs whereof become extracted hereinafter.

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23. The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be well established. The decision of the Privy Council in ***Pulukuri Kotayya and others vs. King-Emperor*** *holds the field even today wherein it was held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:*

> *The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.*

24. The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in ***Emperor vs. Lalit Mohan Chuckerburty****, to "lend assurance to other evidence against a co-accused". In* ***Haricharan Kurmi vs. State of Bihar****, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:*

> *13. …In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.*

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25. In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in ***Shiv Kumar vs. State of Madhya Pradesh*** *overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:*

> *24. …, the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]*

26. Coming to the case at hand, there is not a single iota of evidence except the disclosure statements of Manoj and the co-accused, which supposedly led the I.O. to the recovery of the stolen articles from Manoj and Rs.3,000.00 from Kallu. At this stage, we must hold that admissibility and credibility are two distinct aspects and the latter is really a matter of evaluation of other available evidence. The statements of police witnesses would have been acceptable, had they supported the prosecution case, and if any other credible evidence were brought on record. While the recoveries made by the I.O. under Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.

27. While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from the word 'go'. The common version of all the seizure witnesses,

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> *i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.*

29. Furthermore, in a judgment rendered by the Hon'ble Apex Court in ***Criminal Appeal No.2438 of 2010, titled as "Bijender @ Mandar V. State of Haryana", decided on 08.11.2021***, the relevant principles governing the assigning of creditworthiness become set forth in paragraph 16 thereof, paragraph whereof becomes extracted hereinafter.

> ***16.*** *We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as* ***(i)*** *the period of interval between the malfeasance and the disclosure;* ***(ii)*** *commonality of the recovered object and its availability in the market;* ***(iii)*** *nature of the object and its relevance to the crime;* ***(iv)*** *ease of transferability of the object;* ***(v)*** *the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty consideraions that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (****See: Tulsiram Kanu vs. The State; Pancho vs. State of Haryana; State of Rajasthan vs. Talevar & Anr and Bharama Parasram Kudhachkar vs. State of Karnataka)*.

30. Furthermore, in another judgment rendered by the Hon'ble Apex Court in ***Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided***

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on 03.01.2024, the relevant principles governing the assigning of creditworthiness become set forth in paragraphs 22 to 25 thereof, paragraphs whereof become extracted hereinafter.

> *22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In* ***Mohmed Inayatullah*** *v.* ***State of Maharashtra****12, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.*
>
> *23. The facts proved by the prosecution, particularly the*

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admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR. No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression "custody" under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

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31. Now the principles set forth thereins are that the defence, is required to be proving;

i) That the disclosure statement and the consequent thereto recovery being forged or fabricated through the defence proving that the discovery of fact, as made in pursuance to a signatured disclosure statement made by the accused to the investigating officer, during the term of his custodial interrogation, rather not leading to the discovery of the incriminatory fact;

ii) That the fact discovered was planted;

iii) It was easily available in the market;

iv) It not being made from a secluded place thus exclusively within the knowledge of the accused.

v) The recovery thereof made through the recovery memo in pursuance to the making of a disclosure statement, rather not being enclosed in a sealed cloth parcel nor the incriminatory item enclosed therein becoming sent, if required, for analyses to the FSL concerned, nor the same becoming shown to the doctor concerned, who steps into the witness box for proving that with the user of the relevant recovery, thus resulted in the causings of the fatal ante mortem injuries or in the causing of the relevant life endangering injuries, as the case may be, upon the concerned.

vi) That the defence is also required to be impeaching the credit of the marginal witnesses, both to the disclosure statement and to the recovery memo by ensuring that the said marginal witnesses, do make speakings, that the recoveries were

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not made in their presence and by making further speakings that they are compelled, tutored or coerced by the investigating officer concerned, to sign the apposite memos. Conspicuously, despite the fact that the said recovery memos were not made in pursuance to the accused leading the investigating officer to the site of recovery. Contrarily the recovery memo(s) becoming prepared in the police station concerned.

vii) The defence adducing evidence to the extent that with there being an immense gap *inter se* the making of the signatured disclosure statement and the consequent thereto recovery being made, that therebys the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

32. Therefore, unless the said defence(s) are well raised and are also ably proven, thereupon the making of a disclosure statement by the accused and the consequent thereto recovery, but are to be assigned credence. Conspicuously, when the said incriminatory link in the chain of incriminatory evidence rather is also the pivotal corroborative link, thus even in a case based upon eye witness account.

33. Be that as it may, if upon a prosecution case rested upon eye witness account, the eye witness concerned, resiles therefrom his previously made statement. Moreover, also upon his becoming cross-examined by the learned Public Prosecutor concerned, thus the judicial conscience of the Court become completely satisfied that the investigating officer concerned, did record, thus a fabricated apposite previously made statement in writing, therebys the Courts would be led to declare that the said made apposite

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resilings are well made resilings by the eye witness concerned, thus from his previously made statement in writing.

34. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if they do become ably proven, yet therebys may be the said disclosure statement, and, the consequent thereto made recoveries also loosing their evidentiary tenacity. The said rule is not a straitjacket principle, but it has to be carefully applied depending upon the facts, circumstances and evidence in each case. Tritely put in the said event, upon comparative weighings being made of the well made resilings, thus by the eye witness concerned, from his previously made statement in writing, and, of the well proven recoveries made in pursuance to the efficaciously proven disclosure statement rendered by the accused, the Court is required to be drawing a conclusion, as to whether evidentiary tenacity has to be yet assigned to the disclosure statement and the pursuant thereto recovery memo, especially when they become ably proven and also do not fall foul from the above stated principles, and/or to the well made resiling by the eye witness concerned, from his previously recorded statement in writing. Emphatically, the said exercise requires an insightful apposite comparative analyses being made.

35. To a limited extent also if there is clear cogent medical account, which alike, a frailly rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua the ante mortem injuries or other injuries as became entailed on the apposite

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regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence. Resultantly therebys too, the apposite signatured disclosure statement and the consequent thereto recovery, when may be is of corroborative evidentiary vigor, but when other adduced prosecution evidence, but also likewise fails to connect the recoveries with the medical account. In sequel, thus therebys the said signatured disclosure statement and the consequent thereto recovery, thus may also loose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

36. However, in a case based upon circumstantial evidence when the appositely made signatured disclosure statement by the accused and the consequent thereto prepared recovery memos, do not fall foul, of the above stated principles, therebys they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

37. The makings of signatured disclosure statement and the consequent thereto recoveries, upon able proof becoming rendered qua both, thus form firm incriminatory links in a case rested upon circumstantial evidence. In the above genre of cases, the prosecution apart from proving the above genre of charges, thus also become encumbered with the duty to discharge the apposite onus, through also cogently proving other incriminatory links, if they are so adduced in evidence, rather for sustaining the charge drawn against the accused.

38. Consequently, since the statutory provisions enclosed in Section 25 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter, do not assign statutory admissibility to a simpliciter/bald

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confession made by an accused, thus before the police officer, rather during the term of his suffering custodial interrogation, but when the exception thereto, becomes engrafted in Section 27 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter. Therefore, therebys when there is a statutory recognition of admissibility to a confession, as, made by an accused before a police officer, but only when the confession, as made by the accused, before the police officer concerned, but becomes made during the term of his spending police custody, whereafters the said incriminatory confession, rather also evidently leads the accused, to lead the investigating officer to the place of discovery, place whereof, is exclusively within the domain of his exclusive knowledge.

> "***25. Confession to police-officer not to be proved.***—*No confession made to a police-officer, shall be proved as against a person accused of any offence.*
>
> *x x x x x*
>
> ***27. How much of information received from accused may be proved.***—*Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

39. Significantly, it would not be insagacious to straightaway oust the said made signatured disclosure statement or the consequent thereto recovery, unless both fall foul of the above principles, besides unless the said principles become proven by the defence. Contrarily, in case the disclosure statement and the consequent thereto recovery enclosed in the respective memos, do not fall foul of the above principles rather when they become cogently established to link the accused with the relevant charge. Resultantly, if the said comprises but a pivotal incriminatory link for proving

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the charge drawn against the accused, therebys the snatching of the above incriminatory link from the prosecution, through straightaway rejecting the same, but would result in perpetration of injustice to the victim or to the family members of the deceased, as the case may be.

40. Now coming the facts at hands, since the disclosure statement and the consequent thereto recovery do become efficaciously proven by the prosecution. Moreover, when none of the marginal witnesses, to the said memos become adequately impeached rather for belying the validity of drawings of the memos nor also when it has been proven that the said memos are fabricated or engineered, besides when it is also not proven that the recoveries (supra) did not lead to the discovery of the apposite fact from the relevant place of hiding, thus only within the exclusive knowledge of the accused.

41. Conspicuously also, when the said disclosure statement is but not a bald or simpliciter disclosure statement, but evidently did lead to the making of efficacious recovery(ies), at the instance of the accused, to the police officer concerned.

42. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statement, and, the consequent thereto recoveries, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of credible eye witness account vis-a-vis the crime event. Moreover, when the memos (supra) also lend corroboration also to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

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Post-mortem report

43. The post-mortem report, to which Ex. PH is assigned, became proven by PW-7. PW-7 in his examination-in-chief, has deposed that on making an autopsy on the body of deceased Mohinder, by him along with Dr. S.K.Gosain, thus theirs noticing thereons the hereinafter ante mortem injuries-

> *"1. Punctured wound oval ½ x 0.4 cm size with inverted margins just below right eye. Color of abrasion and smudgering present around the wound. Underlying bone fractured.*
>
> *2. Punctured wound oval 0.5 x 0.4 cm size with inverted margins present in right temple area color of abrasion and smudgering present around the wound. Underlying bone fractured.*
>
> *3. Punctured wound oval 0.5 x 0.4 cm size with inverted margins was present just above the right ear collar of abrasion and smudgering present. Underlying bone fractured.*
>
> *4. Punctured wound oval 0.5 x 0.4 cm size with inverted margins was present in right front to parietal region. Collar of abrasion and smudgering was present. Underlying bone fractured.*
>
> *5. Punctured wound oval 0.5 x 0.4 cm with inverted margins was present at back of left shoulder area on exploration of the injuries on opening the skull brain badly lacerated and raptured at many places, craneal cavity full of blood. On exploration of neck, deep fascia blood vessels and neck muscles raptured."*

44. Furthermore, PW-7 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to shock and haemorrhage as a result of injuries (supra), which were stated to be ante

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mortem in nature, and, also sufficient to cause death in the ordinary course of nature. He further deposed that the injuries on the person of the deceased were caused by fire-arms.

45. The above made echoings by PW-7, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-7 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoings, as made by PW-7, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

Report of the ballistic expert Ex. PX.

46. The apposite recoveries, as became made through recovery memos, were sent in five sealed cloth parcels to the ballistic expert concerned. After the ballistic expert making an examination of the items, as became sent to him in the sealed cloth parcels, he made the hereinafter extracted opinion, to which Ex. PC, is assigned.

"x x x x

Description of parcel(s) and condition of seal(s)

The seals on the parcels were found intact and tallied with the specimen seals as per forwarding authority.

Description of article (s) contained in parcel(s)

Parcel No.	*No. and seal impression*	*Description of parcel(s)*
I.	*3 of SS*	*Stated to contain blood swab collected from lace of occurrence. (Sent to Serology Division in original packing)*
II.	*8 of doctor*	*Stated to contain clothes of deceased Mohinder. (Sent to Serology Division in original packing)*
III.	*2 of doctor*	*Contained four .38" fired bullets stated to have been taken out from the body of deceased Mohinder. (Bullets marked BC/1 and BC/4 by me).*

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IV.	*9 of M.S.*	*Contained one countrymade revolver (chambered for .38" revolver cartridges) stated to have been recovered from accused Raj Kumar. (marked W/1 by me).*
V.	*9 of M.S.*	*Contained five .38" fired revolver cartridge cases stated to have been recovered from accused Raj Kumar. (Marked C/1 to C/5 by me).*

Laboratory Examination

Products of combustion of smokeless powder were detected from the barrel of 7.65 mm pistol marked as W/1 (Chambered for .38" cartridges). Test firings were done in the laboratory from countrymade revolver W/1. Its firing mechanism was found in working order.

The class as well as individual characteristic marks present on .38" fired revolver cartridge cases marked C/1 to C/5, .38" fired bullets marked as BC/1 to BC/4 and those on test fired cartridge cases & bullets fired from countrymade revolver W/1 were examined, compared and under stereo and comparison microscope.

Based on the examinations carried out in the laboratory, the result of analysis is as under-

Result

1. The countrymade revolver marked W/I (Chambered for . 38" revolver cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.

2. .38" fired bullets marked BC/1 to BC/4 have been fired from countrymade revolver W/1 and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.

3. .38" fired revolver cartridge case marked C/1 to C/5 have been fired from countrymade revolver W/1 and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.

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4. The report in original from Serology Division is enclosed herewith.

***Note**:- After examination, the exhibits examined in the Ballistic Division were resealed along with their original wrappers with the seal of DD (Balli) FSL (H).”*

47. A reading of the hereinabove extracted opinion, thus vividly unveils, that the firing mechanism of .38” revolver marked as W/1 was found in working order. Furthermore, it also makes candid underlinings, that .38” fired cartridge cases marked as C/1 to C/5 and .38” fired bullets marked as BC/1 to BC/4, thus becoming fired from the countrymade revolver marked as W/1, and, that the firing of the said cartridge, thus not occurring from any other fire-arm. Consequently, therebys a firm opinion is made vis-a-vis the user of the recovered fire-arm by the accused. Thus, therebys the prosecution has proven, that the accused had, through firing of the apposite bullets from .38” country-made revolver, thus committed the murder of the deceased.

48. Importantly also since the relevant cloth parcels also travelled in an untampered, and, unspoiled condition to the FSL concerned. Moreover, when for the reasons (supra), this Court has assigned probative sanctity to the signatured disclosure statement, and, to the consequent thereto prepared recovery memo. Resultantly, the examination(s), as made on the items enclosed in an untampered, and, unspoiled cloth parcels when do clearly indicate the inculpatory role of the accused-respondents. Therefore, as but a natural corollary thereof, this Court is of the firm view, that the prosecution has been able to cogently establish the guilt of the accused-respondents in the relevant crime event.

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49. Thus, conjoint readings of the report of the doctor concerned, who proved the apposite post-mortem report of the deceased concerned, with the efficaciously proven signatured disclosure statement (Ex. PN) as made by the accused-respondents, and, also with the consequent thereto made valid recovery through recovery memo (Ex.PO), does therebys foster an inference, that therebys there is *inter se* corroboration *inter se* the medical account and the report of the ballistic expert, besides with the memos supra. Resultantly, therebys, the plea of alibi which otherwise for reasons (supra), becomes not cogently proven, thus therebys also becomes inconsequential. In summa, this Court finds a gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final order

50. The result of the above discussion, is that, this Court finds merit in criminal appeal bearing No. ***CRA-D-314-DBA-2003***, as preferred by the State of Haryana and, criminal revision petition bearing No. ***CRR-563-2003***, as preferred by the complainant, and, the same are hereby allowed. The impugned verdict of acquittal, as made on 16.10.2002, upon Sessions Case Nos. 13,14,15 of 1999/2002, by the learned Additional Sessions Judge, Fast Track Court, Sonepat, is quashed and set aside. In consequence, the accused are held guilty for committing the offences punishable under Sections 302 read with Section 34 IPC and under Section 25 of the Arms Act, and, are convicted accordingly. The accused are directed to be produced in custody before this Court on 24.10.2024 for theirs being heard on the quantum of sentence.

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51. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

52. Records be sent down forthwith.

53. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 1st, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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